STATE OF VERMONT

HUMAN SERVICES BOARD

In re	)	Fair Hearing No. 10,941
	)	
Appeal of	)	

INTRODUCTION

The petitioners seek to expunge from the registry a finding by the Department of Social and Rehabilitative Services (S.R.S.) substantiating that they physically abused their two children.

FINDINGS OF FACT

1. The petitioners, Mr. and Mrs. O., are parents of a fifteen-year-old boy and a thirteen-year-old girl.

2. In January of 1987, S.R.S. received and investigated a sexual abuse complaint involving both children but which did not implicate either parent.

3. During the course of the investigation (which was not substantiated as to the sexual abuse) each child volunteered spontaneously (during separate interviews) that their father regularly disciplined them by hitting them with a four inch black belt on the buttocks and legs. The girl, who at that time was eight years old, said she frequently got black and blue marks from the beatings and showed the investigator a scar on her legs which she claimed was the result of a prior beating. The boy, who was then ten years old, also talked of black and blue marks he received from

beating with a folded belt and when asked to produce the force with which he was hit, said he was unable to hit that hard. The boy also said that his mother spanked him on the buttocks one time and produced black and blue marks. Neither child had black and blue marks at the time of the interview. The girl said it had been a week since she was so disciplined; the boy said it had been a month.

4. During a contemporaneous interview with the children's parents, Mr. O. admitted using the belt to discipline his children but denied any bruising. The investigator, who is very experienced and well-trained in abuse assessment and who is also a registered nurse, expressed her concern about the degree of force Mr. O. was using and talked with him about alternative methods of disciplining his children. She also warned him that continued use of excessive force would result in a CHINS petition being brought against him. It was her impression upon leaving the house that Mr. O. did not perceive a problem and would not be receptive to services.

5. Although the father and children's reports were divergent on the degree of injury, the worker decided to substantiate the reports as against both parents because of the spontaneity and consistency of the two children's statements, and because of the lack of gain involved in the children's disclosures. (Both children were unsettled about the possible repercussions of their revelations.) Following

the finding, she requested the school to take note of any new bruises on the children and to report them to S.R.S.

6. The petitioners were apparently not notified of the substantiated "findings" at that time. Both findings came to the attention of Mrs. O. when she recently applied to become a day care provider. She was surprised because she felt following their discussion with S.R.S. that the matter had been treated as a "warning" only.

7. At the hearing, both Mr. O. and Mrs. O. appeared and testified under oath. Mr. O. admitted that he regularly used his belt or his hand to make his children mind and "blistered their bottoms" when they needed it. He also admitted that he had hit the children very hard and had left black and blues marks on the children and had also slapped his son in the face. He stated that he regretted what he had to do and that it sickened his stomach but that this was the only way he knew how to discipline his children. He stated that his own mother had disciplined him by hitting him with a frying pan between the shoulder blades which he considered inappropriate. He described himself as having a bad temper and stated that his wife was often upset by his use of the belt.

8. Mrs. O. testified that about seven years ago she did spank her son on the bottom and left a black and blue mark when he was throwing rocks at some animals in a barn. She stated that he was wearing a bathing suit at the time, did not realize she had hit him that hard, and was

distressed that a bruise resulted. She sometimes spanks the children as a form of discipline but disagrees with her husband about the use of the belt and the force he employs. She stated that at the time at issue, he used the belt two to three times every two or three weeks. Since that time, he has stopped using that form of discipline as much and has calmed down as the children have grown older. Her testimony is adopted as a finding of fact herein.

9. Based on the above, it is found that shortly before and during January of 1987, Mr. O. used a belt to discipline his children on an average of once per week and that he hit both children on the buttocks or legs with hard force, usually leaving bruises and sometimes cuts. It is also found that he virtually ceased using such a form of discipline following a warning from S.R.S. that court action might be taken.

ORDER

The decision of the Department of Social and Rehabilitation Services finding that both children were physically abused by their father, Mr. O., is affirmed. The finding that the son was physically abused by his mother, Mrs. O., is reversed and the finding should be expunged from the registry.

REASONS

The Department of Social and Rehabilitation Services is required by statute to investigate reports of child abuse and to maintain a registry of all investigations unless the

reported facts are "unsubstantiated". 33 V.S.A. ə 4914, 4915 and 4916.

The statute further provides:

> A person may, at any time, apply to the human services board for an order expunging from the registry a record concerning him or her on the grounds that it is not substantiated or not otherwise expunged in accordance with this section. The board shall hold a fair hearing under section 3091 of Title 3 on the application at which hearing the burden shall be on the commissioner to establish that the record shall not be expunged. 33 V.S.A. ə 4917(h)

In order to sustain its burden, SRS is required to show that the registry report is "based upon accurate and reliable information that would lead a reasonable person to believe that a child is abused . . ." See 33 V.S.A. ə 4912(10)

In this case, there is ample evidence, including his own admission, to show that the petitioner regularly spanked his son and daughter with a belt with such force that he usually caused bruises and/or cuts. There is also ample evidence that Mrs. O. spanked and bruised her son on one occasion about seven years ago. It must be found, therefore, that the Department's information, as to the occurrence of these events is accurate and reliable.

The remaining issue is whether or not these facts could lead a reasonable person to believe that the children had been abused. The statute at 33 V.S.A. ə 4912 defines abused child, in pertinent part, as follows:

(2) "An abused or neglected child "means a child whose

> physical or mental health or welfare is harmed or threatened with harm by the acts or omissions of his parent . . .
>
> . . .
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> (3) "Harm" to a child's health or welfare can occur when the parent or other person responsible for his welfare:
>
> (a) Afflicts, or allows to be inflicted, upon the child, physical or mental injury;
>
> . . .
>
> (6) "Physical injury" means death, or permanent or temporary disfigurement or impairment of any bodily organ or function by other than accidental means.

The term "temporary disfigurement" is further defined by the Department in its own Caseworker Manual at ə 1215, page 4, as "that which impair or injures the beauty, symmetry, or appearance of a person or thing: that which renders unsightly, misshapen, or imperfect, or deforms in some manner."

The Board has held in Fair Hearing No. 10,687 that the regulation cited above at 33 V.S.A. ə 4912(3) provides the Department with a very broad range of events which could lead to a finding of abuse but does not require that abuse be found if one of those events occurs. The use of the word "can" gives the Department the authority to find harm based on the existence of one of those events but does not require that it do so. The Department is only bound by the definition of "abused or neglected child" found at 33 V.S.A. ə 4918(2), (see above) which necessarily requires the use

of judgment and a determination based on the whole situation as best it can be known to the social worker.

In this matter, the Department has obviously made its findings characterizing Mr. O.'s actions as abusive on criteria other than just the existence of the bruises or cuts. The evidence shows that the children were disciplined repeatedly and regularly with considerable force which the Department was not unjustified in characterizing as excessive and harmful. While there is no prohibition in the statute against the use of corporal punishment, any punishment which is administered with such force that it consistently produces bodily marks on children is clearly within the definition of harm from which the statute seeks to protect children, even if it is the result of disciplinary attempts by their own parents. It must be concluded, therefore, that a reasonable person would consider that children disciplined in such a manner by their father were being abused.

The same cannot be said, however, for the single spanking administered to her son by the mother. The finding of abuse here is not based on any of the aggravating factors found above and appears to have been made solely on the existence of the bruise. The evidence presented at the hearing shows that the investigation and findings were focussed primarily on Mr. O.'s behavior and not on this incident involving Mrs. O. which was much farther in the past and which appeared not to have been either serious or

repeated. The statute says only that "harm" can occur when a bruise is found but statutory "harm" cannot be presumed solely from the existence of a bruise without investigation of other surrounding factors. See Fair Hearing No. 10,687. It is not reasonable, therefore, to conclude from this context that Mrs. O. abused her son.

It is unfortunate that the petitioner did not find out until recently that a "finding" had been made. The Board understands that the present practice of the Department is to immediately notify perpetrators when a "finding" is made. The petitioners, who were candid and sincerely interested in their children's welfare, are encouraged to seek whatever counseling or other services the Department may be able to offer them. Unless this decision is appealed and reversed, the Department's finding as to Mr. O. will stay on the registry until his youngest child turns eighteen.

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